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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2086

Barton Wayne Hinesly,
P. O. Box 1508
Crescent City, CA 95531

A C C U S A T I O N

Respiratory Care Practitioner No. 12244

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about October 15, 1988, the Respiratory Care Board issued Respiratory Care Practitioner License Number 12244 to Barton Wayne Hinesly (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2008, unless renewed. No prior disciplinary action has been taken against this license.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).”

5. Section 3752 of the Code states, in relevant part:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article.”

6. California Code of Regulations, title 16, section 1399.370, states:

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or shall acts include but not be limited to those involving the following:

1 (a) Violating or attempting to violate, directly or indirectly, or assisting or
2 abetting the violation of or conspiring to violate any provision or term of the Act.

3 ...

4 (c) Conviction of a crime involving driving under the influence or reckless driving
5 while under the influence.”

6 **COST RECOVERY**

7 7. Section 3753.5, subdivision (a) of the Code states, in part:

8 “In any order issued in resolution of a disciplinary proceeding before the board,
9 the board or the administrative law judge may direct any practitioner or applicant found to
10 have committed a violation or violations of law to pay to the board a sum not to exceed
11 the costs of the investigation and prosecution of the case.”

12 8. Section 3753.7 of the Code states:

13 “For purposes of this Chapter, costs of prosecution shall include attorney general
14 or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
15 and service fees.”

16 9. Section 3753.1 of the Code states:

17 “(a) An administrative disciplinary decision imposing terms of probation may
18 include, among other things, a requirement that the licensee-probationer pay the monetary
19 costs associated with monitoring the probation.

20 (b) The board shall not renew or reinstate the license of any licensee who has
21 failed to pay all of the costs ordered under this section once a licensee has served his or
22 her term of probation.”

23 **CAUSE FOR DISCIPLINE**

24 (Conviction of a Crime)

25 10. Respondent is subject to disciplinary action under sections 3750, 3752,
26 3750(d) and (g), in that he was convicted of a crime involving driving under the influence and
27 thereafter committed to custody therefore. The circumstances are as follows:

28 11. On or about April 18, 2006 at approximately 7:00 PM Respondent was

involved in a single vehicle accident in an unincorporated area of Del Norte County, California. Police officers responding to the scene found Respondent alone in the pick-up truck which had run the stop sign at a T-intersection, crossed the road, and become lodged in the trees and brush on the other side. Officers smelled the odor of alcohol emanating from respondent. Respondent stated to the officers that he had been driving to his job at Sutter Coast Hospital when he apparently fell asleep. Respondent attributed this loss of consciousness while driving to the effects of the prescription drugs he had taken earlier in the day—Xanax, Famir, and Ambien, by his account. Respondent further stated he had consumed “two doubles” of whiskey earlier in the day. Based on these statements, the officers’ perceptions, and Respondent’s failure to adequately perform a series of field sobriety tests, Respondent was arrested for driving under the influence. Respondent consented to a blood draw, taken at approximately 8:15 PM, to test for blood alcohol concentration; the test resulted in a reading of 0.13% blood alcohol.

12. On or about May 2, 2006 the District Attorney of Del Norte County filed a misdemeanor complaint against Respondent, charging him with violation of Vehicle Code sections 23152(a) (Driving Under the Influence) and 23152(b) (Driving with a Blood Alcohol Level Above 0.08%). Respondent denied the charges and on January 24, 2007, after a two day trial, Respondent was found guilty by jury verdict of both charges. On February 2, 2007 Respondent was sentenced by the Superior Court of Del Norte County to a suspended sentence, with the imposition of 48 hours in custody, a fine, and standard probationary conditions for a period of three years.

13. Subsequent investigation by the Board confirmed that Respondent was scheduled to work the night shift on the evening of April 18, 2006, beginning at 7:00 PM, in his capacity as a respiratory therapist at Sutter Coast Hospital.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 12244, issued to Barton Wayne Hinesly;

2. Ordering Barton Wayne Hinesly to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: June 26, 2007

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant